

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4217 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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SHRIMATI HANIFA @ HABU W/O RASUL DOST MAHMAD MIYANA

Versus

COMMISSIONER OF POLICE

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Appearance:

MS DR KACHHAVAH for Petitioner

MRS SD TALATI, APP for Respondent No. 1, 2, 3

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CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 17/12/98

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India, two prayers have been made; one for a writ of certiorari for quashing the detention order dated 20th May 1998 passed by the detaining authority, namely, the Commissioner of Police, Ahmedabad City, under Section 3(2) of the Gujarat Prevention of Anti Social Activities Act (for short, "PASAA") and the other for

habeas corpus for immediate release of the petitioner from illegal detention.

2. The brief facts are that the detaining authority, considering five registered criminal cases against the petitioner under the Bombay Prohibition Act and also considering the statements of two confidential witnesses, arrived at subjective satisfaction that the petitioner along with her husband is a bootlegger and her activities are storing, manufacturing, selling and possessing country made liquor coupled and further nefarious activities narrated by the two witnesses were prejudicial for maintenance of public order. Accordingly, the impugned order of detention was passed. This order is under challenge in this writ petition on two grounds. The first ground is that the alleged activities of the petitioner disclosed in the grounds of detention cannot be said to be prejudicial for maintenance of public order and at the most, those activities can be called as prejudicial for maintenance of law and order. It was also argued that since the activities of the petitioner are not prejudicial for maintenance of public order, she could not be preventively detained.

3. Examining the grounds of detention, it can be said that the detaining authority was justified in coming to the subjective satisfaction from five registered cases under the Bombay Prohibition Act that it was almost an occupation of the petitioner to manufacture, store, possess, and sell the country made liquor. These activities can be called as bootlegging activity within the meaning of Section 3(b) of the PASAA.

4. However, a bootlegger cannot be preventively detained simply because he is engaged in bootlegging activity. Further requirement within the meaning of Section 3(4) and explanation to Section 3(4) of the PASAA is that, such activities should be prejudicial for maintenance of public order. If prejudicial activities relate to disturbance of law and order, then preventive detention is hardly justified and such person can be booked under ordinary criminal law. For this, the five registered cases under the Bombay Prohibition Act cannot be considered to have created situation prejudicial for maintenance of public order inasmuch as, in none of the five incidents, the petitioner ever created any resistance to search and seizure or other situation of like nature which was likely to affect the public order or had affected the public order.

5. So far as the statements of two witnesses are

concerned, one witness was beaten by the petitioner's associates on the apprehension that the witness was Police informant. It is not clear whether beating was by some weapon or it was a beating by kicks and fists. The second incident has no improvement except that when the witness refused to store country made liquor from the petitioner that he was beaten and threatened. The persons collected on their alarm and the associates of the petitioner chased them. In the first incident, knife was also shown to the persons who collected at the spot. These two incidents do not travel beyond the sphere of activities prejudicial for maintenance of law and order. These incidents are still on lesser footing than the facts considered by the Apex Court in *M.J.Shaikh v. M.M.Mehta*, C.P., 1995 (2) GLR 1268. In the two incidents under consideration before the Apex Court also, one witness has stated that he was threatened with revolver because he was suspected to be Police informant. The said witness was likewise shown a revolver and the persons who collected at the spot were likewise threatened with revolver. Therefore, the case under consideration cannot stand on a better footing than the case of *M.J.Shaikh's* case (*supra*). As such, the alleged prejudicial activities of the petitioner were not prejudicial for maintenance of public order. As such, the preventive detention is rendered illegal.

6. The second ground is that two representations dated 26th May 1998 and 27th May 1998 sent by the Advocate of the detenu were returned by the Home Department, without consideration and with communication that the signature and thumb impression of the detenu should be obtained and that there was no Vakalatnama, and authority letter etc. from the detenu. The representation dated 26th May 1998 was returned with above objections by the Home Department on 30th May 1998, vide paragraph 3 of the counter affidavit of Shri J.R.Rajput, Under Secretary to the State Government. Likewise, the second affidavit of Shri J.R.Rajput bears categorical admission in paragraph 2 that the representation dated 27th May 1998 was likewise returned with communication dated 1st June 1998 inasmuch as this representation also did not bear the signature or thumb impression of the detenu. It is, therefore, admitted now that the two representations of the detenu have not been considered so far. The technical manner in which these two representations were returned can hardly be appreciated. The representations indicate that they were sent under the authority of the detenu and it was clearly so mentioned in both the representations. Consequently, no Vakalatnama or authority letter was required nor

signature or thumb impression of the detenu was required on the representations. Such technical dealing of the representation was not approved by the Apex Court in Balchand Chorasias v. Union of India, AIR 1978 SC 297. This is also a ground which has rendered the detention and continued detention of the petitioner illegal.

7. For the reasons stated above, the writ petition succeeds and is hereby allowed. The impugned order of detention dated 20th May 1998, Annexure.A to the writ petition is hereby quashed. The petitioner shall be released forthwith unless wanted in some other case.

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